Supreme Court, U.S.
FILED
JUN 16 1994
OFFICE OF THE CLERK

No. 93-1920

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

ELDON K. McDANIEL, DARLENE MOORE, KARL SANNICKS, and ROBERT HUME,
Petitioners,

v.

LESTER TELLIS,
Respondent.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

LESTER TELLIS
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12 pp

QUESTIONS PRESENTED

I. WHETHER NEVADA REVISED STATUTE § 209.241 CREATES A LIBERTY INTEREST FOR EACH INMATE IN THE INTEREST ACTUALLY EARNED ON MONEY DEPOSITED IN THE PRISONERS' PERSONAL PROPERTY FUND.

II. WHETHER THE COURT OF APPEALS ERRED IN ITS INTEPPRETATION OF "PRISONERS' PERSONAL PROPERTY FUND" BY FINDING THE STATUTE CREATED A PROTECTED PROPERTY INTEREST.

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

COMES NOW LESTER TELLIS, acting in Pro Se, and files this opposition to petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

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STATEMENT OF THE CASE

Respondent Lester Tellis, an inmate at the Ely State Prison, filed a civil rights complaint on July 29, 1990, which alleged denial of his First, Fourth, Fifth, Sixth, Ninth, and Fourteenth Amendment rights under the United States Constitution. His allegations stemmed from not receiving interest on his individual inmate account, as well as a denial of his rights of access to the courts.

Respondent filed his action after he was denied access to these funds to hire a private investigator to assist in his post-conviction proceedings in the state courts, and therein learned that interest earned on his individual inmate account was not being placed back into his account as required pursuant to Nevada Revised Statute (hereafter NRS) 209.241(3).

The United States District Court for the District of Nevada, after requesting rebriefing by the parties, entered an order on January 30, 1991, granting Defendants' motion for summary judgment in error, and Respondent timely filed his notice of appeal. The District Court failed to understand that the statute in question and funds in question had only been placed in the "Prisoners' Personal Property Fund" by act of legislation in 1989, when NRS 209.215 was repealed.

The Ninth Circuit Court of Appeals reversed the District Court, stating that the mandatory language of NRS 209.241 creates a protected property interest in the interest earned on each inmate account.

The issues raised by Petitioners are:

I. Whether Nevada Revised Statute 209.241 Creates a Liberty or Property Interest For Each Inmate in the Interest Actually Earned on Money Deposited in the Prisoner's Personal Property Fund, and

II. Whether the Ninth Circuit Erred in its Interpretation of "Prisoners' Personal Property Fund" by Finding the Statute Created a Protected Property Interest.

SUMMARY OF THE ARGUMENTS

The Ninth Circuit Court of Appeals ruled correctly when it found that the Respondent had a protected liberty interest in the earned interest on Respondent's funds maintained in the "Prisoners' Personal Property Fund." NRS 209.241(c) clearly states that each offender has an account within the fund, wherein NRS 209.241(c) states: "[s]hall pay over to each offender upon his release any remaining balance in his individual account." Moreover is the fact that the state has created a protected liberty interest by the mandatory language contained in NRS 209.241.

1. Nevada Revised Statute 209.241 Read Fully Does Create a Protected Property and Liberty Interest

As a fundamental point, the syntax of the entire statute must be reviewed and read as a whole. The beginning of the statute is the starting point. See Lewis v. United States, 445 U.S. 55, 100 S.Ct. 915 (1976), and Cunningham v. Williams, 711 F.Supp. 644 (D.D.C. 1989) which states: "[t]he most fundamental principle in the interpretation of a statute is that the starting point must be the language of the statute itself." Id. at 645. As in the case at bar, the starting point is the statute itself. The statute

begins by speaking of one offender and his personal property, i.e., funds/money that the prisoner receives while incarcerated within the Nevada Department of Prisons. See NRS 209.241(1), and also United States v. Nordic Village Inc., 112 S.Ct. 1011 (1992).

When the entire statute is read as a whole, the mandatory language that is contained within the statute makes it clear that all income and interest is to be returned to the fund, and not to be used by the Director or any other party except for the individual inmates that have accounts within the funds.

Petitioners' reliance on NRS 356.087 is clearly misplaced, in that this statute only involves funds/money that is owned by the state. The Prisoners' Personal Property Fund is money/funds that are owned by the prisoners incarcerated within the Nevada Department of Prisons.

Petitioners have further misled this Court and all the lower courts by their statement that they have been using the interest earned on the Prisoners' Personal Property Fund since 1981. The funds that are at issue in this action are funds that were priorly maintained within the "Offenders Employment Fund," which was repealed by legislation in 1989, when NRS 209.215 was repealed and all these funds were placed into the Prisoners' Personal Property Fund. Thus, the interest and income that have been earned on the fund were to be placed back into the fund. See NRS 209.241(3).

A reading of the statute will clearly demonstrate that legislation intended for each prisoner to have his own account within the fund. See NRS 209.241(2)(c), wherein the statute speaks of each individual account and not of any collective account. Moreover, the statute does not allow for the use of the

interest and/or income on this fund by any person - not even the Director. The Petitioners cannot cite to any statute that allows them to use the interest/income earned on these funds that belong to the prisoners/inmates within the Nevada Department of Prisons.

Respondent has a clearly established expectation of receiving the interest/income earned on the fund, as that is what the statute states in plain, mandatory language.

CONCLUSION

For the reasons stated above, this Respondent respectfully requests this Court to deny the Petitioners' petition for a writ of certiorari in this matter, as the Petitioners' arguments and grounds clearly lack merit.

Respectfully submitted,

LESTER TELLIS
Post Office Box 1989
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Respondent In Pro Se

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I did, on this 14 day of June, 1994, place into the United States mail via handing to a correctional officer, the foregoing OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, postage prepaid with First-Class postage, and addressed as follows:

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